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CRITICALLY ANALYSING THE DIFFERENCE BETWEEN AD HOC ARBITRATION AND INSTITUTIONAL ARBITRATION.

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Abstract:

Arbitration is the outside court settlement. It is a mechanism of Alternative Dispute Resolution, that intends to the amicable settlement between the parties outside court but in a judicious manner. This has a binding effect as it involves the settlement done by a competent person acting as an arbitrator in the judicial manner. The main purpose behind adoption of Alternative Dispute Mechanism is basically the burden on the main courts and speedy resolution amongst the parties. There are two types of Arbitration; namely Ad Hoc and Institutional Arbitration. There is a very thin line of difference between the two and this paper mainly aims at highlighting these two types of arbitration along with the procedures involved in them. The ad hoc arbitration has its own benefits over institutional arbitration and vice versa so the both are critically analysed along with Indian laws and practices. The research also aims to cover all the ancillary laws pertaining to the research topic along with international aspect.

1. Introduction:

Arbitration is the process of solving the dispute outside the court. It is a process in which a third party or a person is included who is subjected to be a neutral one and referred as an Arbitrator. He or She is a person who is basically appointed by both the parties consenting to each other as a private judge to provide an amicable solution to the problem. The main purpose behind adopting this process of finding out solution is mainly due to the fact that it is a faster one, speedy solutions are given and also the parties to the dispute get the problem settled without having the course of law. This approach can be comparatively less costly than the normal court. The process aims to providing only the remedy for the civil disputes and no criminal matters can be solved through any of the Alternative Dispute Mechanisms. The dispute is finally aimed to be settled when it is recorded as per the solution made under the written agreement or

arbitral award is made in that the solutions to the dispute are written and has a contractual obligation that is binding on both the parties. The arbitration is mainly common in the commercial field for its speedy and less complicated structure.

1.1. Ad Hoc Arbitration:

Ad Hoc Arbitration is the one in which there are no institutions of arbitration involved. It is kind of an independent procedure. In this mechanism the parties have to establish their own procure for conduction the arbitration, the number of arbitrators to be appointed, the manner of the process or any other aspects associated with it, have to be determined by the parties themselves. This arbitration does not involve any outsider or administration as parties have to decide amongst themselves that which rules they wish to follow. Since, there is no involvement of any authority, this process is stated to be more flexible, cheaper and comparatively faster as parties decide most of the things by themselves.

If the parties cannot agree on such arbitral detail or, in default of agreement, laid down by the arbitral tribunal at a preliminary meeting once the arbitration has begun, it will be resolved by the law of the seat of arbitration.¹

1.2. Institutional Arbitration:

The institutional arbitration is the process where the arbitrators are there in an institute and unlike the ad hoc arbitration it is not governed by the parties rules. The institution is merely established for the purpose to find out the solution arbitrarily with the help of arbitrators that are enrolled in the institute. The institute has its own rules, regulations, procedures and norms that are to be followed while resolving the dispute between the parties.

In other words, it can be said that it is a specialized institution with permanent character intervenes and assumes the function of aiding and administering the process, as provided by rules of that particular institution.²

2. Difference between Ad Hoc Arbitration and Institutional Arbitration:

2.1 Advantages of Ad Hoc Arbitration:

The special characteristic of Ad Hoc Arbitration is that it can suited for all types of claims be it a larger one or a smaller one. The parties have major control over the whole process, this makes it comparatively easy on the whole. The effectiveness of this process is due to the fact that the procedure goes on as per the agreement between the parties. The parties with mutual consent can also adopt any international or ready-

made available arbitration rules. Hence, the process is more flexible and cost effective or cheaper as it is parties discretion to decide the fees of the arbitrators unlike in institutional arbitration where, the fees of the tribunal and arbitrators is defined and there is no scope of negotiation.

2.2 Disadvantages of Ad Hoc Arbitration:

The absence of the rules or regulations may be attractive as to the parties that they have to be governed by their own rules. But it usually leads to the means of conflict, especially in the matters of international arbitrator where the parties might not be aware of the good arbitrators in the country. The parties usually suffer due to lack of knowledge and if one of the parties are proactive then the other party surely suffers. Lastly, only if both the parties are ready to adapt the same procedures or do not have administrative conflicts then only it works otherwise Ad Hoc Arbitration's mechanism only leads to major conflicts.

1. SundraRajoo, 'Institutional and Ad hoc Arbitrations: Advantages and Disadvantages', The Law Review (2010),
2. Halsbury's Laws of England, (Butterworths, 4th edition, 1991) paragraph 601,332.

2.3 Advantages of Institutional Arbitration:

The biggest advantage here is the institution within itself under whom the issue is resolved. The efficiency is ensured as the administration is there to look after all the procedure, rules and establishment of the mechanism relating to resolving of disputes. The rules are clearly drafted along with the quality of arbitration panel as the institute enrolls the competent persons and there is a supervisions of arbitration tribunal that ensures that there is no default in the procedure. Even if the errors are spotted then the parties can claim with respect to the institutional procedures.

2.4 Disadvantages of Institutional Arbitration:

The institutional arbitration is governed by or under an institution so it is comparatively costly. It is not flexible and the parties do not feel as open or freedom they have in Ad Hoc Arbitration. It is more strict and the rules are governed under the authority that might delay in procedures sometime.

3. Indian Perspective:

The Indian laws are mainly focused on the institutional arbitration. The Arbitration and Conciliation Act 1996, mainly focuses on the laws of arbitration in association with various tribunals or institutions. The institutions such as New Delhi International

Arbitration Centre are set up with their own rules under its act. This concept evidentially states that India majorly follows the Institutional Arbitration.

On the other hand, India has vast population, that enables vast conflicts. Having said that, it is evident that it comprises of many states that do not have complete mechanism for the establishment of arbitration institutions or tribunals. The people belonging to such area follow the concept of Ad Hoc Arbitration. It is common in the matters of business or the commercial disputes where the parties look for amicable solution but as early as possible and that too in a cheaper way. The India is now adapting to the development of arbitration, that inclines it towards making of the institutions. This is globally common as Institutional Arbitration is promoted in this sense, making this sector more firm.

4. Conclusion:

The Ad Hoc Arbitration and Institutional Arbitration have their pros and cons in their own ways just like a coin has its two sides. Nevertheless, according to the research it is clear that in India as well as in the other parts of the world, Institutional Arbitration is more preferred. The reason behind the choice between the two here is that it aims at providing the smoother mechanism that is uniform for all. This avoids further complications and provide ease to all. Moreover, everyone is governed with the same bunch of rules under one roof. The development in the field of Alternative Dispute Mechanism mainly aims as establishing more Institutions to help people to get rid of their conflicts easily. This initiative is being made around the globe as arbitrations are preferred more rather than the normal courts of law. This is also a rapid process than the proper courts, so this is the boom in the upcoming era.

The arbitration and arbitrators are the new developing fields as seen by the upcoming generation in the legal fraternity. This is a growing field that needs a lot of development which has a wide scope along with great future prospects. Therefore, the main developments are done with respect to Institutional Arbitration.